BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

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) Docket No. 234,168
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ORDER

Tracy L. Durham, on behalf of Kathrina L. Durham, appealed the Order dated December 28, 1998, entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is a claim for the death of John P. Brewer, who was shot and killed during a robbery on May 30, 1998. Two applications for benefits have been filed in this claim. First, Destani Duvual Brewer filed an application alleging that she is Mr. Brewer's widow. Next, Tracy L. Durham filed an application on behalf of her minor daughter, Kathrina L. Durham, alleging that Kathrina is Mr. Brewer's daughter.

Ms. Brewer filed a motion requesting paternity testing, which the Judge ordered. Ms. Durham contends the Judge erred by ordering the testing.

The only issues before the Board on this appeal are:

- (1) Did the Judge err by ordering the paternity testing?
- (2) Does the Appeals Board have jurisdiction to review this interlocutory order?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

- 1. This appeal should be dismissed.
- 2. The administrative law judges have the authority to request and order medical examinations that assist them in deciding a claim for benefits.
- 3. An order for paternity testing is an interlocutory order as it is neither a preliminary hearing award of benefits nor a final award.
- 4. The Appeals Board's jurisdiction to review appeals is governed by K.S.A. 1998 Supp. 44-534a and K.S.A. 1998 Supp. 44-551. Those statutes grant the Appeals Board the jurisdiction to review (1) certain preliminary hearing findings and (2) final orders and awards. Neither statute grants the Board the authority to review the interlocutory order now in issue.
- 5. Counsel for Kathrina Durham argues that paternity testing should not be ordered because the issue of whether Kathrina is Mr. Brewer's daughter was resolved in a default judgment in a district court proceeding. The Board believes that argument is premature. Although counsel may be correct, the Appeals Board does not reach that issue. The issue before the Board at this time is not whether the Division is bound by a district court judgment but whether a judge's order for medical tests is an interlocutory order.

AWARD

WHEREFORE, the Appeals Board dismisses this appeal leaving the December 28, 1998 Order entered by Administrative Law Judge Nelsonna Potts Barnes in full force and effect.

IT IS SO ORDERED.

Dated this da	y of April 1999.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Joseph Seiwert, Wichita, KS
David H. Farris, Wichita, KS
Marvin R. Appling, Wichita, KS
Jeffery R. Brewer, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director